SUPREME COURT, U. S.

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1370

LAKESIDE HOSPITAL ASSOCIATION, et al.,
Petitioners,

vs.

THE FIRST NATIONAL BANK OF KANSAS CITY, et al.,
Respondents.

BRIEF IN OPPOSITION OF RESPONDENT, THE FIRST NATIONAL BANK OF KANSAS CITY

HILARY A. BUSH
KENT SNAPP
1414 Home Savings Building
1006 Grand Avenue
Kansas City, Missouri 64106
Attorneys for Respondent, The First National Bank of Kansas City

R. L. MERSERHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-8080

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OPINION BELOW

The Opinion of the Supreme Court of Missouri, not yet published, appears in Appendix A to the Petition herein at A1-31; the Opinion and Judgment of the trial court, not to be published, appears in Appendix B to the Petition herein at A32-44.

JURISDICTION

Respondent adopts the jurisdictional statement of Petitioners set out at page 2 of the Petition herein.

QUESTIONS PRESENTED

Does the decree in this suit, brought by the trustee of a public charitable trust created by will, to construe the meaning of certain words used by the testator in describing the class of hospitals and the class of patients in such hospitals that he intended to designate as the beneficiaries of his trust, i.e., Protestant Christian Hospitals operated on a nonprofit basis in Jackson County, Missouri, and/or patients in such hospitals born of white parents in the United States of America, contravene the prohibitions against religious and racial discrimination found in the First and Fourteenth Amendments and the decisions of this court construing those amendments, because said decree:

(a) Lends judicial approval and enforcement of privately initiated racial discrimination, or

(b) Entangles state agencies excessively in matters of religion?

STATEMENT OF THE CASE

Homer McWilliams, Deceased, created the McWilliams Memorial Hospital Trust by his Last Will and Testament, as amended by a First Codicil thereto, and funded that Trust out of his residuary estate.

The First National Bank of Kansas City, Missouri, a Respondent herein, is now the sole surviving Trustee of that Trust.

Under the terms of the Trust, the Trustee is required to distribute annually, substantially all of the income, in the form of unrestricted gifts to one or more hospitals, to be chosen by it in its sole discretion from a class of hospitals described in the Will as being "Protestant Christian Hospitals operated on a not-for-profit basis in Jackson County, Missouri" and/or to one or more patients in such hospitals, to be chosen by it in its sole and absolute discretion from a class of patients described in the Will as being "born of white parents".

Upon receipt of the Trust assets, the Trustee brought this suit in a state court in Missouri, asking the court to construe the meaning of the language used by Homer McWilliams in describing the beneficiaries of his Trust. Named as defendants in that suit were the Attorney General of Missouri, all of the hospitals, both public and private, then licensed to operate in Jackson County, Missouri, and the known and unknown heirs at law of Homer McWilliams.

At the trial, the evidence was uncontradicted that Homer McWilliams was a private individual; that the Trust here under examination was funded entirely out of his own private funds; that the Trustee, The First National Bank of Kansas City, Missouri, is a national bank organized under the national banking laws of the United States; that there are twenty-three licensed hospitals operating in Jackson County, Missouri; that nineteen of those hospitals admittedly had no special relationship whatsoever with any Protestant Christian Church; that the four remaining hospitals, St. Luke's Hospital, Kansas City Lutheran Home and Hospital Association, Baptist Memorial Hospital and Independence Sanitarium and Hospital, all did have a special relationship to a Protestant Christian Church, in that, while each such hospital was

organized as a separate Missouri nonprofit corporation, the Charter of each such hospital required that at least a majority of its governing body be communicants or officials of a certain Protestant Christian Church.

The evidence was also uncontradicted that none of the twenty-three hospitals located in Jackson County, Missouri, including the four having a special relationship with a Protestant Christian Church, operated their hospitals in a discriminatory manner and that all of the facilities of all of said hospitals, including membership on the medical staff, was fully and equally open to all races and creeds.

The principal charge of illegality made by the Petitioners in the state courts was (1) that the Trustee, by selecting beneficiaries in the manner required by the trust, would be performing acts of religious and racial discrimination and (2) that such acts of discrimination would be rendered illegal under the provisions of the First and Fourteenth Amendments because the trust cannot be executed without in some way involving "state action".

This Respondent defended against that charge on the ground that even if the method of selecting beneficiaries required by the trust did result in discrimination, such discrimination was not illegal and did not violate the provisions of the First and Fourteenth Amendments because no "state action" would be required in the execution of the trust.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I. There Is No Special or Important Reason for Granting This Writ.

There is no serious dispute between Petitioners and Respondent over the law involved in this case. Both agree that if some form of discrimination will necessarily result from the execution of the Trust here under examination and that some form of "state action" will necessarily be required in the enforcement of that discrimination, that a violation of the First and Fourteenth Amendments will occur.

Our dispute is primarily a factual one involving the facts in this particular case, i.e., do the facts in this particular case show that "state action" will necessarily become involved in the execution of the Trust.

A determination of the issues presented by this case will not, therefore, serve as guidelines for other cases in which the facts may be different, and a factual situation such as that presented here is unlikely to reoccur.

Only a few hospitals in Jackson County, Missouri, and a few patients therein will be affected by the outcome of this case and it therefore has no wide public importance.

We submit that there is no special or important reason for granting this writ and that it should be refused.

II. The Decision of the Supreme Court of Missouri Is Correct and Is Not in Conflict with Any Decision of This Court.

Petitioners' primary attack is based on their contention that the court's decree as to Count V of the petition

in the Will Construction Suit, went beyond a mere determination of the intent of the testator and provided additional and affirmative action to enforce the allegedly discriminatory provisions of the Trust.

The law is clear that discrimination that does not require some form of "state action" to enforce it, is not illegal under the First and Fourteenth Amendments. This rule has been laid down in many cases, one of which is *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 722, 81 S.Ct. 856, 860, in which the court said:

> "It is clear, as it always has been since the Civil Rights Cases, supra, that 'Individual invasion of individual rights is not the subject-matter of the amendment' 109 U.S. at page 11, 3 S. Ct. at page 21, and that private conduct abridging individual rights does no violence to the Equal Protection Clause *unless to some significant extent the State in any of its manifestations has been found to have become involved in it.* (Emphasis added)."

The law is also clear that the bringing of a will construction suit does not involve state action, unless the court, in its decree, goes beyond a mere determination of the intention of the testator and affirmatively exercises its jurisdiction to enforce the illegal provisions of the will. This court has specifically so held in *Evans* v. *Abney*, 396 U.S. 435, 90 S.Ct. 628.

Petitioners have, therefore, of necessity, been forced to argue that the decree in this particular will construction suit goes beyond a mere determination of which hospitals and which patients therein Homer McWilliams intended to designate as the beneficiaries of his Trust and provides some additional and affirmative relief that constitutes "state action".

Our defense to that charge is to ask this court to read again just what the court was asked to do in Count V of the Petition and just what the court did do in its decree. These two documents clearly show that all the court was asked to do and all that it did do, was to determine by a construction of the language used in the Will, which hospitals and which patients in such hospitals the testator intended to identify as the beneficiaries of his Trust. The court did not in any manner attempt to tell the Trustee which of the qualified hospitals or patients it should select as beneficiaries or how it should execute the Trust in any other particular. The conclusion stated in the decree was that, according to the language used in the Will, the testator intended to designate as the beneficiaries of his Trust, four particular hospitals in Jackson County, Missouri, each having a close connection with a Protestant Christian Church and such patients in those hospitals as were born of white parents. This is all the court decreed.

We submit that a reading of the decree of the trial court as to Count V of the petition, clearly shows that the court did not wrongfully exercise its power by affirmatively taking part in the administration of this Trust.

CONCLUSION

We, therefore, submit that the decision of the Missouri Supreme Court is correct and is not in conflict with any decision of this court, and that the Petition for a Writ herein should be denied.

Respectfully submitted,

HILARY A. BUSH
KENT SNAPP
1414 Home Savings Building
1006 Grand Avenue
Kansas City, Missouri 64106
Attorneys for Respondent, The First National Bank of Kansas City